

(c) Within 2 years of the effective date of this regulation, agencies shall review their current contractual arrangements in the light of the guidance of this subpart, in order to (1) identify, modify as necessary, and authorize management and operating contracts and (2) modify as necessary or terminate contracts not so identified and authorized, except that any contract with less than 4 years remaining as of the effective date of this regulation need not be terminated, nor need it be identified, modified, or authorized unless it is renewed or its terms are substantially renegotiated.

[48 FR 42163, Sept. 19, 1983, as amended at 50 FR 52434, Dec. 23, 1985]

17.603 Limitations.

(a) Management and operating contracts shall not be authorized for—

(1) Functions involving the direction, supervision, or control of Government personnel, except for supervision incidental to training;

(2) Functions involving the exercise of police or regulatory powers in the name of the Government, other than guard or plant protection services;

(3) Functions of determining basic Government policies;

(4) Day-to-day staff or management functions of the agency or of any of its elements; or

(5) Functions that can more properly be accomplished in accordance with Subpart 45.3, Authorizing the Use and Rental of Government Property.

(b) Since issuance of an authorization under 17.602(a) is deemed sufficient proof of compliance with paragraph (a) immediately above, nothing in paragraph (a) immediately above shall affect the validity or legality of such an authorization.

(c) For use of project labor agreements, see subpart 22.5.

[61 FR 39204, July 26, 1996, as amended at 66 FR 27415, May 16, 2001; 72 FR 27384, May 15, 2007; 74 FR 34207, July 14, 2009; 75 FR 19177, Apr. 13, 2010]

17.604 Identifying management and operating contracts.

A management and operating contract is characterized both by its purpose (see 17.601) and by the special relationship it creates between Govern-

ment and contractor. The following criteria can generally be applied in identifying management and operating contracts:

(a) Government-owned or -controlled facilities must be utilized; for instance, (1) in the interest of national defense or mobilization readiness, (2) to perform the agency's mission adequately, or (3) because private enterprise is unable or unwilling to use its own facilities for the work.

(b) Because of the nature of the work, or because it is to be performed in Government facilities, the Government must maintain a special, close relationship with the contractor and the contractor's personnel in various important areas (e.g., safety, security, cost control, site conditions).

(c) The conduct of the work is wholly or at least substantially separate from the contractor's other business, if any.

(d) The work is closely related to the agency's mission and is of a long-term or continuing nature, and there is a need (1) to ensure its continuity and (2) for special protection covering the orderly transition of personnel and work in the event of a change in contractors.

17.605 Award, renewal, and extension.

(a) Effective work performance under management and operating contracts usually involves high levels of expertise and continuity of operations and personnel. Because of program requirements and the unusual (sometimes unique) nature of the work performed under management and operating contracts, the Government is often limited in its ability to effect competition or to replace a contractor. Therefore contracting officers should take extraordinary steps before award to assure themselves that the prospective contractor's technical and managerial capacity are sufficient, that organizational conflicts of interest are adequately covered, and that the contract will grant the Government broad and continuing rights to involve itself, if necessary, in technical and managerial decisionmaking concerning performance.

(b) The contracting officer shall review each management and operating contract, following agency procedures, at appropriate intervals and at least

once every 5 years. The review should determine whether meaningful improvement in performance or cost might reasonably be achieved. Any extension or renewal of an operating and management contract must be authorized at a level within the agency no lower than the level at which the original contract was authorized in accordance with 17.602(a).

(c) Replacement of an incumbent contractor is usually based largely upon expectation of meaningful improvement in performance or cost. Therefore, when reviewing contractor performance, contracting officers should consider—

(1) The incumbent contractor's overall performance, including, specifically, technical, administrative, and cost performance;

(2) The potential impact of a change in contractors on program needs, including safety, national defense, and mobilization considerations; and

(3) Whether it is likely that qualified offerors will compete for the contract.

PART 18—EMERGENCY ACQUISITIONS

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AUTHORITY: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

SOURCE: 71 FR 38248, July 5, 2006, unless otherwise noted.

18.000 Scope of part.

(a) This part identifies acquisition flexibilities that are available for emergency acquisitions. These flexibilities are specific techniques or procedures that may be used to streamline the standard acquisition process. This part includes—

(1) Generally available flexibilities; and

(2) Emergency acquisition flexibilities that are available only under prescribed circumstances.

(b) The acquisition flexibilities in this part are not exempt from the requirements and limitations set forth in FAR Part 3, Improper Business Practices and Personal Conflicts of Interest.

(c) Additional flexibilities may be authorized in an executive agency supplement to the FAR.

[71 FR 38248, July 5, 2006, as amended at 72 FR 46344, Aug. 17, 2007]

18.001 Definition.

Emergency acquisition flexibilities, as used in this part, means flexibilities provided with respect to any acquisition of supplies or services by or for an